

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
PAYYANNUR**

Present: Kum. Lakshmipriya. T. K.,
Judicial First Class Magistrate.

Saturday, the 30th day of May, 2026/09th day of Jyaishta, 1948

CALENDER CASE NO.657/21

Complainant : The SHO, Payyannur Police Station,
Crime No.116/21,

(By APP Grade – I, Payyannur)

Accused : 1. Deepu K V, S/o Narayanan,
Aged 27/21, Kodivalappil House,
Near Vellur Bank, Vellur amsom.

2. Rajeesh P R, S/o P P Raveendran,
Aged 35/21, Puthanpura
Vadakkathil House, Near
Ramankulam, Vellur amsom.

(By Adv. Sri. K. Vijayakumar.)

Offence : U/s 341,323,294(b),506(i) r/w 34 of IPC

Plea : Not Guilty.

Finding : Not Guilty.

Sentence or Order : Both accused are acquitted u/s 255(1)
of Cr.P.C.

DESCRIPTION OF ACCUSED

Sl. No.	Name of the P.S.& Cr. of offence	Name	Father's Name	Occupation	Residence	Age
1.	Payyannur, Cr.no. 116/21	Deepu K V,	Narayanan	Vellur	27/21

2. Payyannur, Rajeesh P R, Raveendran Vellur 35/21
Cr.no. 116/21

Date of:

1. Occurrence	: 08.03.21
2. Complaint	: 14.03.21
3. Apprehension	: 12.04.2021
4. Release on bail	: 12.04.2021
5. Commitment	: ...
6. Commencement of trial	: 13.12.2022
7. Commencement of evidence	: 03.04.2023
8. Close of trial	: 29.05.2026
9. Sentence or order	: 30.05.2026
10. Service copy of judgment	: Copy is ready
11. Explanation for delay	: No delay
12. Period of detention undergone during investigation, inquiry or trial for the purpose of section 428 CrPC	: ...

This case came up for consideration during today's proceedings and the court delivered the following:

J U D G M E N T

1. This is a case instituted upon final report filed by Sub Inspector of police Payyannur PS in Cr. No.116/21 for the offence punishable u/s 341,323,294(b),506(i) r/w 34 of IPC.

2. **Prosecution case in brief is as follows:** On 08.03.2021 at 11.00 hours at Karamel in Vellur amsom, the accused No.1 & 2 in furtherance of their common intention wrongfully restrained CW1 and CW2, while they were travelling in a bike to Payyannur side and beaten them with hand and caused injury to them. Further the accused persons abused CW1 & CW2 in obscene

language and also threatened to kill them. Thereby the accused persons said to have been committed the offence punishable u/s 341,323,294(b),506(i) r/w 34 of IPC.

3. The court took cognizance of offences and issued process against accused. On appearance of accused, copies of all relevant prosecution records are furnished to them. Particulars of offences were read over to them to which they pleaded not guilty and claimed to be tried.

4. On the side of prosecution PW1 to PW8 were examined and Exts. P1 to P9 were marked. Hence the prosecution evidence closed. After the witnesses of the prosecution have been examined, accused was questioned u/s 313(1)(b) of Cr.PC. Accused denied all the incriminating circumstances that appeared in evidence against them. Thereafter the accused were called upon to enter their evidence, but no defence evidence was adduced on behalf of the accused.

5. Heard both sides.

6. **Points arise for consideration:**

1) Whether the accused persons in furtherance of their common intention on 08.03.2021 at 11.00 hours at Karamel in Vellur amsom wrongfully restrained PW1 & PW2 and thereby committed the offence u/s 341 r/w 34 of IPC?

2) Whether the accused persons in furtherance of their common intention on 08.03.2021 at 11.00 hours at Karamel in Vellur amsom

voluntarily beaten PW1 & PW2 and thereby committed the offence u/s 323 r/w 34 of IPC?

3) Whether the accused persons in furtherance of their common intention on 08.03.2021 at 11.00 hours at Karamel in Vellur amsom uttered obscene words against PW1 & PW2 and thereby committed the offence under section 294(b) of IPC?

4) Whether the accused in furtherance of their common intention criminally intimidated PW1 & PW2 as alleged by the prosecution and thereby committed offence punishable u/s.506(i) r/w 34 of IPC ?

5) If the offence is proved, what is the order as to sentence?

7. **Point No. 1 to 4:** These points are considered together for the sake of convenience. Prosecution has examined PW1 to PW8 witnesses. PW1 is the defacto-complainant who deposed that he is residing at Kuniyan, Karivellur and he is working as a sound engineer. Further he submitted that on 08.03.2021 at 11.00 am, while he was travelling in his bike along with his brother Rajith to Payyannur for buying some articles, the accused persons chased them and stopped in front of his bike and accused No.1 pushed him down from the vehicle and hit his right eye with hand and caused injury. He further submitted that Deepu kicked him and when his brother tried to prevent the same, the 2nd accused wrongfully restrain him and both accused were beaten him and accused No.2 taken his apple mobile phone when the phone fell down to the floor. Further he submitted that accused No.1 abused

him in filthy language and also threatened him to kill. He further submitted that he went to Payyannur Saba hospital and treated as OP and some problem was happened to his vision by the hit. He has given complaint to the police which is marked as Ext.P1. He further deposed that the mobile phone was not received yet and he identified the accused persons from the court.

8. PW2 deposed that on 08.03.2021 at 11.00 am, while he was travelling in a bike along with PW1 accused persons chased their bike and stopped near them and they pushed PW1 from the vehicle. Further he deposed that the accused No. 1, Deepu beaten PW1 in his face by saying that "നീ എന്റെ കുടുംബം തകർക്കുമല്ലേ". Further, he stated that Deepu pushed him down from the bike and sustained simple injury in his left hand. He took Vijesh to Saba hospital and treated as OP. He further deposed that at evening on the same day again went to Payyannur cooperative hospital with accused No.1 as he has pain at is hand. He further deposed that he and PW1 were assaulted by Deepu and Rajeesh. But he has not told the matter to the doctor as the accused named Deepu was along with him at the time of consulting the doctor. He has identified the accused persons from the court.

9. PW3 is the doctor who deposed that while he was working as CMO at Saba hospital, Payyannur, he has examined one Vijesh, 32 years on 08.03.2021 at 12.45 pm brought by his friend Ranjith with the alleged history of assault by some person and he has issued a certificate which is marked as Ext.P2 and on verification it is seen that there was contusion in his head and

the injury sustained by him is simple in nature.

10. PW4 is the SCPO of Payyannur PS who deposed that while he was on GD charge duty on 14.03.24 at 17.36 hours, he has recorded the Ext.P1 FI Statement of Vijesh, the defacto complainant and he identified the same. He further deposed that he has registered the crime No.116/21 on the basis of Ext.P1 FIS and the FIR is marked as Ext.P3.

11. PW5 is the Sub Inspector of Payyannur PS who deposed that on 15.03.2021 he took charge of the investigation and examined the place of occurrence pointed out by the defacto complainant and prepared scene mahazar in the presence of witnesses which is marked as Ext.P4. He further deposed that he has recorded the statement of CW1 to CW6 and he has collected the Ext.P2 wound certificate from CW6 and produced before the court and he identified Ext.P2. The section 427 of IPC deleting report is marked as Ext.P5 and the section altering report is marked as Ext.P6. He further deposed that he arrested the accused on 12.04.2021 and released on bail and the bail bonds are marked as Ext.P7series (2 numbers) and the arrest memo is marked as Ext.P8. The name and address report of the accused is marked as Ext.P9 and he has completed the investigation and filed charge sheet against the accused.

12. PW6 is the attestor of scene mahazar who deposed that he has witnessed the preparation of Ext.P4 scene mahazar from the place of occurrence and he signed in Ext.P4 as a witness and he identified the same.

13. PW7 is the attesor of scene mahazar who deposed that he has signed in the Ext.P4 scene mahazar from his work place and he identified his signature in Ext.P4.

14. PW8 is the eyewitness to the incident who deposed that he has not seen the incident as the accused persons assaulted PW1. He turned hostile to the prosecution case.

15. I have gone through the entire evidence and records before the court. The case of the prosecution is that the accused No.1 & 2 in furtherance of their common intention wrongfully restrained CW1 and CW2, while they were travelling in a bike to Payyannur side and beaten them with hand and caused injury to them. Further the accused persons abused CW1 & CW2 in obscene language and also threatened to kill them. PW1 is the defacto-complainant and injured in this case. Similarly, PW2 is also the injured in this case.

16. The learned counsel for the accused submitted that there is delay in lodging FIR and that is not properly explained. There is no explanation for the delay in the lodging the FIR. It is further argued that there are no external injuries seen in the medical certificate and wound certificate, though it is mentioned by the PW1 in his chief. Further it is argued the eye witness has turned hostile.

17. Learned Asst. Public Prosecutor vehemently argued that the elements of the offence are proved. The evidence of PW1, PW2 coupled with

the evidence of PW3 stoutly supports the prosecution case.

18. I have carefully considered the evidence adduced by the prosecution. Learned counsel of the accused vehemently argued that there is delay of 6 days in registering the FIR. In **Hariprasad @ Kishan Sahu v. State of Chattisgarh 2023 KHC 6980**, Hon'ble SC has reiterated that "the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution". Hence this court has to critically evaluate whether there is any satisfactory explanation for the delay.

19. Now the court has to analysis the oral testimony of the PW1 to see whether the version given by the PW1 is creditworthy or not. Hence, the evidence of the PW1 has to be taken with a pinch of salt and a deeper scrutiny with other evidence on record is also indeed for and looked into. As discussed above, the PW1 and the accused were not in good terms as PW1 allegedly send obscene messages to the wife of the first accused and mediation was also happened between them which was not useful. During cross-examination, PW1 stated that some people were present in the ration shop, located about 100 meters from the place of incident, but they were not examined in this case. He further mentioned that within half an hour of the incident, he went

to the hospital with an injury to his leg caused by a kick. PW1 explained that he and the accused were standing face to face when the accused struck him with his right hand. Although it was suggested that such an assault could not have occurred in that position, PW1 denied this. He specifically asserted that the first accused hit him on his hand and face, while the second accused kicked him. PW1 also stated that PW2 took him to the government hospital, where he was admitted the same day. He admitted that they did not go to the police station immediately, as hospital authorities had assured them that the matter would be reported. PW1 later went to the police station after 5–6 days, explaining that he was tired. Initially, he admitted there was no other reason for the delay, but later added that he was resting at home. He also claimed that he had already informed the police, though this was not recorded in their documents. Thus he was giving different reasons for the delay caused in reporting to the police.

20. During cross-examination, PW2 stated that the first accused is related to PW1, as the accused's wife is the daughter of PW1's aunt. He acknowledged that PW1 had sent obscene messages to the wife of the accused, which had led to prior disputes. PW2 further testified that both he and PW1 sustained visible injuries, which were shown to the doctor. He admitted that he was accompanied by the first accused to the hospital, a fact also mentioned to the police. However, he explained that the cause of the injuries was not disclosed to the doctor because the accused was present at the time, and this

detail was not recorded by the police. PW2 also admitted that a wound certificate from the cooperative hospital stated the injuries were due to a bike accident, though neither the prosecution nor the defence produced this certificate in court. When it was suggested that he falsely claimed the accused accompanied him to avoid the entry in the wound certificate, he denied it. He also denied that there were many shops near the place of incident, stating that only four shops were there, with customers, along with some houses. PW2 admitted he did not know when PW1 lodged the complaint, but confirmed that his statement was recorded by the police a few days later. He also acknowledged that PW1 is both his relative and his neighbor. Thus it is an admitted fact that both PW1 and PW2, the injured witnesses are in fact relatives.

21. PW3 is the doctor who examined PW1 and he issued the certificate. PW4 and PW5 are officials. PW4 is the officer who recorded the FIS and registered the FIR. In his cross examination he admitted that PW1 had stated that he was under impression that the intimation would be given from the hospital to the police station. But he also admitted that the reason for delay was not mentioned in the FIR. PW5 also in his cross examination stated that the reason for delay was not mentioned in the FIR but in the FIS it was stated that PW1 was under impression that the intimation would be given from the hospital.

22. PW6 and PW7 are scene mahasar witness and they identified Ext.P4. PW8 is the eye witness to the incident but they turned hostile to the prosecution. Though learned APP sought permission to ask question u/s 157 BSA, nothing could be brought on record to discredit her evidence. Though PW8, the independent eyewitness, turned hostile to the prosecution case, it is settled law that the evidence of hostile witness need not be rejected in toto and the portion supporting the prosecution can be relied upon if corroborated by other evidence. However, in the present case, PW8 has not supported the prosecution in material particulars. Therefore, the prosecution case mainly rests upon the testimony of PW1 and PW2, who are the injured witnesses.

23. It is a settled position of law that the evidence of injured witnesses carries greater evidentiary value and ordinarily such witnesses would not falsely implicate another leaving aside the real culprit. At the same time, where there exists admitted previous enmity between the parties, the evidence of such witnesses requires careful scrutiny. In the present case, the evidence of PW1 and PW2 clearly reveals the existence of prior disputes between PW1 and the first accused in connection with the allegation that PW1 had sent obscene messages to the wife of the first accused. Therefore, their evidence has to be appreciated cautiously.

24. On careful evaluation of the evidence, it is seen that there are material infirmities and circumstances creating doubt regarding the prosecution version. Admittedly, the alleged incident occurred on 08.03.2021

at 11.00 a.m., whereas Ext.P1 First Information Statement was lodged only on 14.03.2021 after a delay of six days. As per the deposition, PW1 stated that the delay in lodging the FIR happened due to the feeling of tiredness and the PW2 stated that he thought that the fact will be intimated to the police by the hospital authority. But is true that no explanation was offered for the delay in the FIR. Thus, PW1 and PW2 attempted to explain the delay by stating that they believed the hospital authorities would intimate the matter to the police and that PW1 was tired and resting at home, but admittedly no satisfactory explanation is incorporated either in Ext.P1 FIS or Ext.P3 FIR. The unexplained delay assumes significance in the light of the admitted previous enmity between the parties and creates a possibility of embellishment and deliberation.

25. Further, though PW1 and PW2 deposed regarding assault and injuries, Ext.P2 wound certificate issued by PW3 shows only a simple contusion on the head of PW1. No injuries corresponding to the alleged kick and assault on other parts of the body were noted in the medical records. PW2 also admitted in cross examination that in the wound certificate issued from the Cooperative Hospital, the cause of injury was shown as a bike accident. Though such wound certificate was not produced before the court, the said admission creates further doubt regarding the prosecution story especially when it was stated that PW2 went to the hospital with the first accused.

26. It has also come out in evidence that the place of occurrence is near shops and houses and that customers were present nearby. However, no independent witness supporting the prosecution version has been examined. PW8, the alleged eyewitness, turned hostile. Therefore, except the interested testimony of PW1 and PW2, there is no convincing independent corroboration available before the court.

27. Though the prosecution alleged commission of offence under Section 294(b) of IPC, the obscene words allegedly uttered by the accused does not come under the definition section 294 (b) of IPC. In the case of *Latheef v. State of Kerala* (2014 (2) KLD 21), it was held that to attract an offence punishable under section 294(b) of IPC the alleged word must involve some lascivious elements arousing sexual thoughts or feeling or the words must have the effect of depriving person and defiling morals by sex appeal or lustful desire. Further in that case the accused alleged to have abused the complainant by calling “പുലയാടി മോനെ.....” and it was held that though the words used are really abusive and humiliating, it cannot be said as obscene and the said words do not satisfy the test of obscenity as defined in the Code. Thus the mere statement that obscene words were uttered is insufficient to attract the offence under Section 294(b) IPC. Likewise, regarding the offence under Section 506(i) IPC, except the vague allegation that the accused threatened PW1, there is no cogent evidence to show that the alleged threat caused alarm to the complainant so as to constitute criminal intimidation.

28. In criminal cases, the prosecution has the burden to prove the guilt of the accused beyond reasonable doubt. If two views are possible, the view favourable to the accused has to be adopted. In the present case, the unexplained delay in lodging the FIR, admitted previous enmity between the parties, absence of convincing medical corroboration, non-examination of independent witnesses, and hostile attitude of PW8 create serious doubt regarding the prosecution case. Hence, this court is of the view that the prosecution has failed to prove the offences alleged against the accused beyond reasonable doubt. Hence Point Nos.1 to 4 are found against the prosecution.

29. **Point No.5:-** In view of my finding on point Nos. 1 & 2, accused is found not guilty of the offence punishable u/s 341, 323, 294(b) and 506(i) read with Section 34 of IPC.

In the result,

Both accused are acquitted u/s 255(1) of Cr PC of the offences punishable u/s 341,323,294(b),506(i) r/w 34 of IPC and their bail bonds stand cancelled and they are set at liberty.

(Dictated to Confidential Assistant, transcribed and typed her, corrected and pronounced by me, in open court this on the 30th day of June, 2026.)

Judicial First Class Magistrate,
Payyannur.

APPENDIX:**WITNESSES FOR THE PROSECUTION** :

PW1	Vijesh	Defacto complainant
PW2	Ranjith	Eyewitness
PW3	Dr. V C Raveendran	Medical witness
PW4	Vinayakumar	Police witness
PW5	Manojkumar	Investigating Officer
PW6	Sujesh	Scene mahazar witness
PW7	Bhaskaran	Scene mahazar witness
PW8	Geetha	Eye witness

EXHIBITS FOR THE PROSECUTION :

Ext.P1/PW1	F I Statement dtd. 14.03.21
Ext.P2/PW3	Wound certificate dtd. Nil.
Ext.P3/PW4	F I Report dtd. 14.03.21
Ext.P4/PW5	Scene Mahazar dtd. Nil
Ext.P5/PW5	Section 427 IPC deleting report dtd. Nil.
Ext.P6/PW5	Section altering report dtd.12.04.21
Ext.P7/PW5	Bail bond of A1 dtd.12.04.21
Ext.P7(a)/PW5	Bail bond of A2 dtd.12.04.21
Ext.P8/PW5	Arrest memo dtd.12.04.21
Ext.P9/PW5	Name and address report of accused dtd. Nil.

MATERIAL OBJECTS MARKED : Nil.**WITNESSES FOR THE DEFENCE** : Nil**EXHIBITS FOR THE DEFENCE** : Nil**MATERIAL OBJECTS MARKED** : Nil

Sd/-

Judicial First Class Magistrate,
Payyannur.

//True copy//

Judicial First Class Magistrate,
Payyannur.

